

PT 00-23

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

KENILWORTH
UNION CHURCH,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0009
(98-16-1007)
P.I.N: 05-27-100-035

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Ms. Kristin L. Benedict of Crane & Norcross on behalf of the Kenilworth Union Church (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on January 6, 2000. Said determination found that: (1) the first floor of the building improvement located on real estate identified by Cook County Parcel Index Number 05-27-100-035 (hereinafter the "subject property"), and a proportionate amount of its underlying land, qualified for exemption from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the "Code"); but, (2) the second and third floors of said improvement, and a proportionate amount of their underlying ground,

together with the garage located on said property, did not qualify for exemption from 1998 real estate taxes under Section 15-40 of the Code.

At issue herein is whether those portions of the subject property that the Department determined to be non-exempt (hereinafter the “portions in dispute”) were “used exclusively for religious purposes,” as required by Section 15-40 of the Code. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on July 1, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the entire subject property be exempt. The Department, however, partially rejected this Recommendation by issuing the aforementioned determination, which, in pertinent part, found that the portions in dispute were not in exempt use.

Applicant filed a timely appeal as to this partial denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that the portions in dispute be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on January 6, 2000, finding that the portions in dispute are not in exempt use.
2. Applicant, a non-denominational Christian church, obtained ownership of the subject property, Chicago, IL, by means of a warranty deed dated July 30, 1984. Applicant Motion Ex. 1.

3. The Application for Property Tax Exemption (hereinafter the “Application”), filed with the Department on August 3, 1999, indicates that the subject property is located at 417 Warwick Road, Kenilworth, IL and improved with a 3 story building and an adjacent garage.
4. The improvement is commonly known as the “Kenilworth Union Church Manse” (hereinafter the “Manse”) in applicant’s church community. Applicant Motion Ex. No. 2.
5. A Sidwell map shows that the Manse is located immediately adjacent to applicant’s church, which is situated on real estate identified by Cook County Parcel Index Numbers 05-27-100-032, 05-27-100-047 and 05-27-100-048.
6. Applicant’s church was exempted from real estate taxes pursuant to Departmental determinations in Docket Nos. 97-16-972 and 97-16-973. These exemptions remained in full force and effect throughout the 1998 assessment year. Administrative Notice.
7. The first floor of the Manse was, per the Application, used for religious school purposes throughout 1998. This area is not at issue herein, as it is already exempt under terms of the Department’s determination.
8. The second and third floors of the Manse, and its adjacent garage, were used for church-related storage during 1998. Items stored in these areas included surplus church property, such religious artwork, books, audio tapes, welcome brochures and other materials that applicant regularly used at its church all through the tax year in question. Applicant Motion Ex. No. 2.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether applicant's 1998 uses of the portions in dispute qualify as "exclusively ... religious," as within the meaning of Section 15-40 of the Property Tax Code

The word "exclusively" when used in Section 200/15-40 and other property tax exemption statutes means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The applicable statute herein mandates that applicant demonstrate that it actually put the subject property to, or was actively developing said property for, some specifically identifiable exempt use during the period in question. *See*, 35 ILCS 200/15-40; Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt). In this case, applicant was actively using the portions in dispute to store surplus church property throughout the tax year in question.

Storage areas are subject to exemption, provided that applicant's use thereof is "reasonably necessary" to facilitate another specifically identifiable exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). Such a use could not be ascertained from the documents applicant included with its original submission because such documents failed to disclose exactly how applicant used the portions in dispute to further the "religious purposes" associated with its tax-exempt church.

Applicant cured this evidentiary deficiency via the affidavit of use (Applicant Motion Ex. No. 2) that it submitted in support of its motion for summary judgment. This document clarified that applicant actually stored church-related materials in the portions in dispute during 1998. Consequently, applicant is now entitled to have said portions exempted from 1998 real estate taxes as a matter of law.

Based on the foregoing, I conclude that applicant's motion for summary judgment, which seeks relief only with respect to the portions in dispute, should be granted. Accordingly, the Department's initial determination in this matter should be modified to reflect that 100% of the subject property, inclusive of: (1) all of the building

improvements (i.e. the Manse and its adjacent garage) situated thereon; together with, (2) all of the underlying land, qualifies for exemption from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

WHEREFORE, for all the aforementioned reasons, it is my recommendation that 100% of real estate real estate identified by and situated on Cook County Parcel Index Number 05-27-100-035 be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

September 27, 2000

Date

Alan I. Marcus
Administrative Law Judge